

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
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)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
)
Debtor.)

MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH TOBIN M. PARKER, PAINT ROCK CATTLE MANAGEMENT, LLC, PAINT
ROCK CATTLE COMPANY, LP, AND PLATEAU PRODUCTION COMPANY

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as Chapter 11 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of Eastern Livestock Co., LLC (“Debtor” or “ELC”), by counsel, hereby files this motion (“Settlement Motion”) requesting the Court's approval of a compromise and settlement of claims between the Trustee and Tobin M. Parker (“Parker”), Paint Rock Cattle Management, LLC, Paint Rock Cattle Company, LP, and Plateau Production Company (“Defendants”), pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as **Exhibit A** (“Settlement Agreement”). In support of this Settlement Motion, the Trustee respectfully represents the following:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. On July 23, 2012, the Trustee filed the Trustee's Chapter 11 Plan of Liquidation [Doc. No. 1255] and the First Amended Chapter 11 Plan of Liquidation on October 26, 2012 [Doc. No. 1490] ("Plan"). The Court entered an Order on December 12, 2012 [Doc. No. 1644] confirming the Plan.

4. On May 1, 2013, the Trustee commenced Adversary Proceeding No. 13-59020 against the Defendants ("Adversary Proceeding").

5. The Trustee's Complaint sought to enforce payment on two (2) Promissory Notes ("Note Receivable Claims") in the principal amounts of \$103,562.23 and \$97,000.00.

The Settlement

6. On April 22, 2014, the parties mediated the Adversary Proceeding and entered into a Memorandum of Settlement. The mediated settlement was contingent upon the Trustee's receipt of verified financial statements from Parker.

7. The following is a summary of the key provisions of the Settlement Agreement. Parties should refer to the Settlement Agreement for a full explanation of the proposed settlement.

8. Pursuant to the Settlement Agreement, Defendants shall pay to the Trustee the total sum of \$35,000.00 (the "Settlement Amount"). The Settlement Amount shall be paid in one lump sum payment. The Trustee has already received payment of the Settlement Amount and is holding it in trust. The parties have also agreed to release each other from all claims or causes of action known or unknown, direct or indirect, related to the Chapter 11 Case and the Adversary Proceeding.

9. In negotiation of the Settlement Agreement and the Settlement Amount, the Trustee advises that, apart from assertion of substantial defenses to the claims, and to avoid the cost, expense, and delay of litigation, Defendants also demonstrated an inability to pay any substantial judgment against them and that the Trustee's judgment, if any, would be behind in priority a prior, unsatisfied judgment. The collection issue ultimately became the central and overwhelming factor driving the settlement negotiations. Counsel for the Trustee performed a diligent review of verified financial statements provided by Parker (due to the confidential financial information, Parker's financial statements are redacted from the Settlement Agreement filed with this Settlement Motion). The Trustee relied on the representations in the financial statements and undertook to protect the interests of the Estate in the event of material omissions or misrepresentations contained in the financial statements. To that end, Section 6 of the Settlement Agreement nullifies and voids the Settlement Agreement if the Trustee discovers that Parker has made a fraudulent or otherwise a material misrepresentation concerning his financial position.

10. In accordance with the terms of the Plan, the Settlement Amount shall become part of the Collateral Fund (as that term is defined in the Estate's confirmed Chapter 11 Plan).

11. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and Defendants pursuant to the terms and conditions set forth in the Settlement Agreement.

Basis for Relief

12. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in

the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d at 426 (citations omitted).

13. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the Estate. It is the Trustee’s view that the Estate would incur significant costs and expenses in litigating the claims against Defendants. Ultimately, and in reliance on the financial statements, other records and evidence produced, and the Trustee’s counsel’s own investigation, the Trustee believes that the Settlement Amount represents the highest amount that the Trustee could recover and collect from Defendants when factoring in the costs of litigation and the financial condition of Defendants.

14. If no objections to this Settlement Motion are filed, the Parties request that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit “A” and grant the Trustee all other just and proper relief.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

By: /s/ Jay P. Kennedy

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2016, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on March 16, 2016, a copy of the foregoing pleading was served via electronic mail transmission on the following:

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